

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF
PENNSYLVANIA

BLAIR DOUGLASS

Plaintiff,

v.

THE MITCHELL GOLD CO.,

Defendant.

Case No. 2:22-cv-01399-MJH

ORDER

AND NOW, this 5th day of December, 2022, upon consideration of Plaintiff's Motion For Reconsideration and accompanying brief, (ECF Nos. 9 & 10) and Defendant's Response, (ECF No.12), Plaintiff's Motion for Reconsideration is GRANTED.

Defendant, as the removing party, has the burden of proving this Court's jurisdiction over the present action. *Samuel-Bassett v. Kia Motors Am., Inc.*, 357 F.3d 392, 396 (3d Cir. 2004). 28 U.S.C. § 1446(b) states:

The notice of removal of a civil action or proceeding shall be filed within thirty days after the receipt by the defendant, through service or otherwise, of a copy of the initial pleading setting forth the claim for relief upon which such action or proceeding is based, or within thirty days after the service of summons upon the defendant if such initial pleading has then been filed in court and is not required to be served on the defendant, whichever period is shorter.

The exhibits attached to Plaintiff's Motion for Reconsideration, Plaintiff's Motion for Remand, and Defendant's Notice of Removal establish that Plaintiff's Process Server served the Complaint in this action on Defendant's Registered Agent on September 1, 2022. Defendant's Notice of Removal was not filed until October 5, 2022, which is 34 days

after Defendant was served. As Defendant did not meet the 30-day requirement of § 1446(b), the Court lacks jurisdiction over this action.

While Defendant has burden of proving jurisdiction, Plaintiff has the burden to demonstrate the validity of service. *Grand Entm't Grp., Ltd. v. Star Media Sales, Inc.*, 988 F.2d 476, 488 (3d Cir. 1993). By attaching its Process Server's Affidavit of Service to the Motion for Remand, Plaintiff has satisfied his burden of proving effective service of process as required under Federal Rule of Civil Procedure 4(l)(1).

Plaintiff's Motion for Remand is also GRANTED. The Court hereby remands this case to the Allegheny County Court of Common Pleas. The Clerk of this Court shall make out a certified copy of the Motion for Remand and this Order and shall forward it to the Department of Court Records of the Allegheny County Court of Common Pleas.

s/Marilyn J. Horan
Marilyn J. Horan
United States District Judge